IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7333 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESH KANTILAL PANDYA

Versus

BHARAT VIJAY MILLS LTD

Appearance:

1. Special Civil Application No. 7333 of 2004
MR HEMANT S SHAH for Petitioner No. 1
NANAVATI ASSOCIATES for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 18/01/2005

ORAL JUDGEMENT

#. Rule. Mr. Dhaval Nanavati, the learned advocate

appearing for Nanavati Associates waives service of Rule.

#. The petitioner is before this Court being aggrieved by an order dated 3.4.2001, passed by the Labour Court in Restoration Application No. 5 of 1997, a copy of which is produced at Annexure:D to this petition, and also the order dated 6th April, 2004, passed by the Industrial Tribunal, Ahmedabad in Appeal No. (IC) 3 of 2002, copy whereof is produced at Annexure:F to the petition. The petitioner has prayed that Original BIR Application No. 18 of 1992 be restored to file and the same be heard on merits.

#. The learned advocate Mr. Shah invited attention of this court to the reasons for which the learned Judge of the Labour Court, Kalol was pleased to reject Misc. Application No. 5 of 1997. It is recorded by the learned Judge that along with the main application (BIR Application No. 18/92), application exh.2 was filed under Section 119(D) of the Bombay Industrial Relations Act for interim relief. In the said application, the court had issued show cause notice on 15.10.1992. The Mill-Company filed its reply to the said application (exh.2) on 5.9.994 and submitted copy thereof for the workman in the court. What is recorded by the learned Judge is that the workman did not collect the copy of the reply and did not proceed with hearing of the matter. Mr. Shah submitted that had the workman known about the reply, he would have proceeded with the hearing of the application.

#. Mr. Shah further submitted that on the date on which the hearing was kept i.e. on 10th March, 1997, the workman was required to rush to his native place as a message was received about serious illness of his relative. The learned advocate representing the workman was also not present as he had gone to the High Court for some urgent work, thus, neither the workman nor his advocate could remain present and, therefore, the learned Judge was pleased to dismiss the BIR application. The learned Judge of the Labour Court did not find any substance in the Misc. Application No.5 of 1997 and, therefore, rejected the same by order dated 3rd April, 2001, against which, an appeal filed before the Industrial Tribunal was also dismissed by the learned President of the Industrial Tribunal, Gujarat, by order dated 26th March, 2004.

#. Having heard the learned advocate for both the parties, having gone through the record of the case and having gone through the contents of the orders under

challenge, in this petition, this Court is of the opinion that the workman must have got atleast one opportunity to present his case, on merits. The learned Judge of the Labour Court ought to have taken into consideration that, in Labour Courts the matters do take long. Not collecting a copy of reply cannot be fatal so as to deprive the the workman of his right to get his case heard on merits. In view of the aforesaid discussion, this petition is allowed. The impugned judgment and order dated 3rd April, 2001 and judgment and order dated 26th March, 2004 are hereby quashed and set aside. Original BIR Application No. 18 of 1992 is restored to file.

5.1 Taking into consideration that the matter is old enough, the learned Judge of the Labour Court below is directed to give priority to this case and decide the same as early as possible, preferably by 31st August, 2005. Rule is made absolute accordingly with no order as to costs.

[RAVI R. TRIPATHI, J.]
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